

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, JANUARY 13, 2004

The Council of the City of San Jose convened in Regular Session at 9:33 a.m. in Council Chambers at City Hall.

Present: Council Members: Campos, Chavez, Chirco, Cortese, Dando, Gregory, LeZotte, Reed, Williams, Yeager; Gonzales.

Absent: Council Members: None.

Upon motion unanimously adopted, the City Council recessed to Closed Session at 9:35 a.m. in Room 600 to (A) confer with Legal Counsel regarding existing litigation pursuant to Government Code Section 54956.9 Subsection (a) to consider cases of Cripe, et al v. City of San José, et al, Doe v. Doe, City of San José v. Movassate, et al, Chegwin Construction, Inc. v. City of San José, Horta, LLC v. City of San José, Evans v. City of San José, et al, City of San José v. County of Santa Clara, Santa Clara County Airport Landuse Commission, et al.; (B) to confer with Legal Counsel regarding anticipated litigation (a) of a matter where there is significant exposure to litigation pursuant to subsection (b) of Section 54956.9 of the Government Code and (2) to discuss a matter in the initiation of litigation pursuant to subsection (c) of Section 54956.9 of the Government Code, (C) Public Employment/Public Employee appointment pursuant to government code section 54957; Title, Police Chief, Title; Acting City Clerk.

By unanimous consent, Council reconvened from Closed Session and recessed at 10:41 a.m.. and reconvened at 1:34 p.m. in Council Chambers, City Hall.

Present: Council Members: Campos, Chavez, Chirco, Cortese, Dando, Gregory, LeZotte, Reed, Williams, Yeager; Gonzales.

Absent: Council Members: None.

INVOCATION (DISTRICT 1)

Dr. P. T. Mammen, Central Church of the Nazarene led the Invocation.

PLEDGE OF ALLEGIANCE

Mayor Gonzales led the Pledge of Allegiance.

Mayor Gonzales introduced and congratulated the appointments Rob Davis as the new Chief of Police of the San José Police Department and Deanna Santana as the Interim City Clerk.

ORDERS OF THE DAY

Upon motion by Council Member Gregory, seconded by Council Member Chavez, and unanimously carried, the Order of the Day and the Amended Agenda were approved. Vote: 11-0-0-0.

CEREMONIAL ITEMS

1.1 Presentation of a commendation to Sunset Plaza for their commitment to economic development and investment in District Five. (Campos)

Documents Filed: None.

Discussion/Action: Mayor Gonzales was joined at the podium by Council Member Campos to present a commendation to Cindy Vu and Don Vu from the Sunset Plaza for their commitment to economic development and investment to District Five. Cindy Vu thanked the community of San José, Mayor Gonzales and the City Council for the honor of the commendation.

CONSENT CALENDAR

Upon motion by Council Member Williams, seconded by Council Member Cortese and unanimously carried, the Consent Calendar was approved and the below listed actions taken as indicated. Vote: 11-0-0-0.

2.2 (a) **ORD. NO. 27042 – Rezones certain real property situated at the southwest corner of West San Carlos Street and Josefa Street (500 W. San Carlos Street) to CP Commercial Pedestrian Zoning District. C 03-080**

Documents Filed: Proof of publication of title of Ordinance No. 27042 executed on January 2, 2004, submitted by the City Clerk.

Discussion/Action: Ordinance No. 27042 was adopted. Vote: 11-0-0-0.

(b) **ORD. NO. 27043 – Rezones certain real property situated on the east side of Hicks Avenue, approximately 320 feet southerly of Dry Creek Road to A(PD) Planned Development Zoning District. PDC 03-050**

Documents Filed: Proof of publication of title of Ordinance No. 27043 executed on January 2, 2004, submitted by the City Clerk.

Discussion/Action: Ordinance No. 27043 was adopted. Vote: 11-0-0-0.

(c) **ORD. NO. 27044 – Rezones certain real property situated at the northwest corner of Blossom Hill Road and Santa Teresa Boulevard to A(PD) Planned Development Zoning District. PDC 03-075**

Documents Filed: Proof of publication of title of Ordinance No. 27044 executed on January 2, 2004, submitted by the City Clerk.

2.2 (Cont'd.)

Discussion/Action: Ordinance No. 27044 was adopted. Vote: 11-0-0-0.

- (d) **ORD. NO. 27045 – Rezones certain real property situated at the north side of Story Avenue, approximately 290 feet southwesterly of Jackson Avenue to CN Commercial Neighborhood Zoning District. C 02-048**

Documents Filed: Proof of publication of title of Ordinance No. 27045 executed on January 2, 2004, submitted by the City Clerk.

Discussion/Action: Ordinance No. 27045 was adopted. Vote: 11-0-0-0.

- (e) **ORD. NO. 27046 – Rezones certain real property situated at the west side of McCreery Avenue, approximately 230 feet southerly of Alum Rock Avenue to A(PD) Planned Development Zoning District. PDC 02-082**

Documents Filed: Proof of publication of title of Ordinance No. 27046 executed on January 2, 2004, submitted by the City Clerk.

Discussion/Action: Ordinance No. 27046 was adopted. Vote: 11-0-0-0.

- (f) **ORD. NO. 27047 – Rezones certain real property situated on the east side of St. Elizabeth Street, approximately 530 feet southerly of McKinley Avenue to R-M Multiple Residence Zoning District. C 03-089**

Documents Filed: Proof of publication of title of Ordinance No. 27047 executed on January 2, 2004, submitted by the City Clerk.

Discussion/Action: Ordinance No. 27047 was adopted. Vote: 11-0-0-0.

- 2.3 (a) **Adoption of a resolution authorizing the City Manager to negotiate and execute an agreement with the Humane Society Silicon Valley for the Humane Society to provide the month-to-month City-specific animal shelter services for the period of January 1, 2004, through June 30, 2004, at a cost to the City not to exceed \$984,000. CEQA: Not a Project. (Parks, Recreation and Neighborhood Services) (Deferred from 12/16/03 – Item 2.15)**
- (b) **Report on status of the Animal Care Center Project and take appropriate actions based on information in the status report. CEQA: Negative Declaration, H01-01-003. (Public Works)**

Documents Filed: Memorandum from Director of Parks, Recreation & Neighborhood Services Sara Hensley, dated December 10, 2003, recommending adoption of said resolution.

Discussion/Action: Item 2.3(b) was deferred to January 20, 2004 and Resolution No. 71902, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Agreement with the Humane Society Silicon Valley for Animal Shelter Services in an Amount Not to Exceed \$984,000”, was adopted. Vote: 11-0-0-0.

2.4 Adoption of a resolution:

- (a) Approving the delivery of a new credit facility for the Multifamily Housing Revenue Bonds (Fairway Glen Apartments Project) Issue A of 1985 (the "Bonds");**
- (b) Approving the extension of maturity of the Bonds;**
- (c) Approving the remarketing of the Bonds;**
- (d) Approving in substantially final form the First Supplement to Indenture, Second Amended and Restated Indenture of Trust, Financing Agreement, Second Amendment to Regulatory Agreement, and Assignment and Intercreditor Agreement; and**
- (e) Authorizing the City Manager, Director of Finance, Deputy Director of Finance, Debt & Risk Management and Director of Housing to execute and, as appropriate, to negotiate, execute, and deliver these documents and other related documents as necessary.**

CEQA: Not a Project. Council District 4. (Finance/Housing)

Documents Filed: Memorandum from Finance Director Scott Johnson and Director of Housing Leslye Corsiglia, dated December 10, 2003, recommending adoption of said resolution.

Discussion/Action: Resolution No. 71903, entitled: "A Resolution of the City of San José Approving and Authorizing a First Supplement to Indenture, a Second Amendment and Restatement of an Indenture of Trust, A Second Amendment to Regulatory Agreement, and a Financing Agreement Relating to the City of San José Multifamily Housing Revenue Issue A of 1985 (Fairway Glen Apartments Project), and Authorizing the Execution and Delivery of and Approving Other Related Documents and Approving Other Related Actions in Connection Therewith", was adopted. Vote: 11-0-0-0.

2.5 Adoption of a resolution:

- (a) Approving the delivery of a new credit facility for the Multifamily Housing Revenue Bonds (Foxchase Drive Apartments Project) Issue B of 1985 (the "Bonds");**
- (b) Approving the extension of maturity of the Bonds;**
- (c) Approving the remarketing of the Bonds;**
- (d) Approving in substantially final form the First Supplement to Indenture, Second Amended and Restated Indenture of Trust, Financing Agreement, Second Amendment to Regulatory Agreement, and Assignment and Intercreditor Agreement; and**
- (e) Authorizing the City Manager, Director of Finance, Deputy Director of Finance, Debt & Risk Management and Director of Housing to execute and, as appropriate, to negotiate, execute, and deliver these documents and other related documents as necessary.**

CEQA: Not a Project. Council District 9. (Finance/Housing)

Documents Filed: Memorandum from Finance Director Scott P. Johnson and Director of Housing Leslye Corsiglia, dated December 10, 2003, recommending adoption of said resolution.

2.5 (Cont'd.)

Discussion/Action: Resolution No. 71904, entitled: "A Resolution of the City of San José Approving and Authorizing a First Supplement to Indenture, a Second Amendment and Restatement of an Indenture of Trust, a Second Amendment to Regulatory Agreement, and a Financing Agreement Relating to the City of San José Multifamily Housing Revenue Issue B of 1985 (Foxchase Drive Apartments Project), and Authorizing the Execution and Delivery of an Approving Other Related Documents and Approving Other Related Actions in Connection Therewith", was adopted. Vote: 11-0-0-0.

2.6 Approval of award of open purchase orders for supplies, materials, equipment, and services for FY 2003-2004 #10, and authorization for the Director of General Services to execute the purchase orders. CEQA: See memo for CEQA designation(s). (General Services)

Documents Filed: Memorandum from Director of General Services Jose Obregon, dated December 10, 2003, recommending approval of said award.

Discussion/Action: The award of purchase orders List #10 for FY 2003-2004 was approved and execution of the purchase orders authorized. Vote: 11-0-0-0.

2.7 Reject all bids for the purchase of two Sludge Dredges and authorize the Director of General Services to re-solicit bids. CEQA: Not a Project. (General Services)

Documents Filed: Memorandum from Director of General Services Jose Obregon, dated December 10, 2003, recommending rejection of all bids for said purchase.

Discussion/Action: The rejection of all bids for said purchase was approved. Vote: 11-0-0-0.

2.8 Approval of an award to purchase 88 Motorola Vehicular Radio Modems from Motorola C& E, Inc., as a sole source purchase for a total not to exceed \$204,058.91, including sales tax and delivery, and authorization for the Director of General Services to execute the purchase order. CEQA: Not a Project. (General Services)

Documents Filed: Memorandum from Director of General Services Jose Obregon, dated December 10, 2003, recommending approval of said award.

Discussion/Action: The award of said purchase from Motorola C&E, Inc. was approved and execution of the purchase order was authorized. Vote: 11-0-0-0.

2.9 Approval of Independent Police Auditor, Teresa Guerrero-Daley's travel calendar January through March 2004. Funding: Various outside sources. (Independent Police Auditor)

Documents Filed: Memorandum from Independent Police Auditor Teresa Guerrero, dated December 16, 2003, recommending approval of said travel requests.

2.9 (Cont'd.)

Discussion/Action: The Independent Police Auditor's travel calendar was approved.
Vote: 11-0-0-0.

2.10 Adoption of a resolution authorizing the City Manager to negotiate and execute a continuation agreement with the Community Foundation of Silicon Valley (CFSV) to extend the term to December 31, 2004. CEQA: Exempt, PP03-12-383. Council District 3. SNI: University. (Parks, Recreation and Neighborhood Services)

Documents Filed: Memorandum from Director of Parks, Recreation & Neighborhood Services Sara Hensley, dated December 10, 2003, recommending adoption of said resolution.

Discussion/Action: Resolution No. 71905, entitled: "A Resolution of the City of San José Authorizing the City Manager to Negotiate and Execute a Continuation Agreement with Community Foundation of Silicon Valley", was adopted. Vote: 11-0-0-0.

2.11 Adoption of the following amendments to the annual appropriation ordinance and funding sources resolution in the General Fund as follows:

- (a) Establish an appropriation in the City-wide Expenses to the Police Department for the Office of Traffic Safety Sobriety Checkpoint Program for Local Law Enforcement Agencies Grant in the amount of \$39,920; and**
 - (b) Increase the Earned Revenue Estimate from the State of California by \$39,920.**
- CEQA: Not a Project. (Police/City Manager's Office)**

Documents Filed: Memorandum from Acting Chief of Police Thomas R. Wheatley and Budget Director Larry D. Lisenbee, dated December 10, 2003, recommending adoption of said amendments to the annual appropriation ordinance and funding sources resolution.

Discussion/Action: Ordinance No. 27048, entitled: "An Ordinance of the City of San José Amending Ordinance No. 26916 to Appropriate Moneys in the General Fund for the Traffic Safety Sobriety Checkpoint Program; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption", and Resolution No. 71906, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 71608 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2003-2004 to Adjust Revenues in the General Fund", were adopted. Vote: 11-0-0-0.

2.12 Adoption of a resolution of intention to annex Annexation Area 1 into Community Facilities District No. 8 (Communications Hill) and levy a special tax on land within Annexation Area 1, and setting a public hearing on February 17, 2004 at 1:30 p.m. CEQA: Negative Declaration and Addenda thereto, PP03-11-361. Council District 7. (Public Works)

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated December 10, 2003, recommending adoption of said resolution.

2.12 (Cont'd.)

Discussion/Action: Resolution No. 71907, entitled: "A Resolution of the Council of the City of San José to Annex Territory Into Community Facilities District No. 8 (Communications Hill) and to Authorize the Levy of Special Taxes", was adopted. Vote 11-0-0-0.

2.13 Adoption of a resolution to consider the establishment of Rule 20A Underground Utility District on Stevens Creek Boulevard, between Calvert Drive and Stern Avenue, and setting a public hearing on February 10, 2004 at 1:30 p.m. CEQA: Exempt, PP03-12-375. Council District 1. (Public Works)

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated December 10, 2003, recommending adoption of said resolution.

Discussion/Action: Resolution No. 71908, entitled: "A Resolution of the Council of the City of San José Setting the Time and Place for a Public Hearing to Consider the Establishment of Rule 20A Underground Utility District Stevens Creek Boulevard, From Calvert Drive to Stern Avenue, On February 10, 2004 at 1:30 P.M.", was adopted. Vote: 11-0-0-0.

2.14 Approval of an agreement with the City of Campbell for the City of San José to provide surveying and map review services in an amount not to exceed \$225,000 in revenue, for the period January 1, 2004 through December 31, 2004. CEQA: Not a Project. (Public Works)

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated December 10, 2003, recommending approval of said agreement with the City of Campbell for the City of San José.

Discussion/Action: The said agreement with the City of Campbell was approved. Vote: 11-0-0-0.

2.15 Approval of the HP Pavilion Biennial Advertising Plan, and approval of conforming amendment to the Arena Management Agreement. (San José Arena Authority)

Documents Filed: Memorandum from Chair of the San José Arena Authority William Clayton, dated December 10, 2003, recommending approval of the HP Pavilion Biennial Advertising Plan and said conforming amendment.

Discussion/Action: The HP Pavilion Biennial Advertising Plan and said conforming amendment was approved. Vote: 11-0-0-0.

2.16 Adoption of a resolution approving Council Appointee salaries. (Mayor) (Rules in Lieu Referral 1/7/04)

2.16 (Cont'd.)

Documents Filed: Memorandum from Mayor Gonzales, dated January 12, 2004, recommending approval of not awarding a base salary increase or one-time merit pay for the City Council for this current fiscal year.

Discussion/Action: Resolution No. 71909, entitled: "A Resolution of the Council of the City of San José Approving Recommendations with Regard to Council Appointee Salaries", was adopted. Vote: 11-0-0-0.

STRATEGIC SUPPORT SERVICES

3.2 Report of the Rules Committee – December 17, 2003

Vice Mayor Dando, Chair

Documents Filed: The Rules Committee Report of December 17, 2003.

- (a) Redevelopment Agency items reported out at Redevelopment Agency meeting
- (b) City Council
 - (1) Review January 13, 2004 Draft Agenda

The Committee recommended approval of the January 13, 2004 City Council agenda with two additions.

- (2) Add New Items to January 6, 2004 Amended Agenda
 - Mayor and Council Member Requests
 - City Manager Requests
 - City Attorney Requests
 - City Clerk Requests

Dropped – Meeting Canceled

- (b) City Council
 - (3) List of Reports Outstanding — There was no report filed.

- (c) Legislative Update
 - (1) State
 - (a) 2003 State Legislative Summary. Attachment: Memorandum from Roxanne Miller, Legislative Representative in Sacramento, reporting on the 2003 State Legislative Session; Attachment A – final Legislative Bill Matrix; Attachment B – final Statue of Legislation; and Attachment C – Extraordinary Legislative Bill Matrix.

The Committee accepted the Legislative Summary.

- (2) Federal – There was no report.

3.2 (Cont'd.)

(d) Meeting Schedules

- (1) Approve the 2004-2005 Budget Study Session Schedule. Attachment: Memorandum from Mayor Gonzales, dated December 17, 2003 recommending approval of the Study Session Schedule to review the proposed 2004-2005 City and Redevelopment Agency budgets.

The Committee recommended approval of the following Study Sessions to review the proposed 2004-2005 City and Redevelopment Agency budgets:

May 10, 2004	1-5pm	2004-2005 Budget Overview
		Study Session on CSA/Appointee Review
May 12, 2004	8:30 am – Noon	Study Session on CSA/Appointee Review
May 13, 2004	8:30 am – Noon	Study Session on Capital Improvement Program
	1-5pm	Study Session on CSA/Appointee Review
May 14, 2004	8:30 am – Noon	Study Session on CSA/Appointee Review
May 17, 2004	8:30 am – Noon	Study Session on CSA/Appointee Review
May 19, 2004	1-5pm	Study Session on Redevelopment Agency
May 20, 2004	8:30 am – Noon	Study Session on CSA/Appointee Review
	1-5pm	Study Session on CSA/Appointee Review
May 21, 2004	8:30 am – Noon	Study Session on CSA/Appointee Review
	1-5pm	Study Session on CSA/Appointee Review

The Committee also approved a Rules-In-Lieu meeting to be held January 7, 2004.

- (e) The Public Record. Attachment: Memorandum from City Clerk Patricia L. O'Hearn, dated December 11, 2003, transmitting items filed for the Public Record for the period December 4 – 9, 2003.

The Committee noted and filed the Public Record.

- (f) Appointment to Boards, Commissions and Committees – There were none.

(g) Rules Committee Reviews, Recommendations and Approvals

- (1) Report back on Labor Code requirements for payment of workers' compensation benefits

The Committee deferred this item to a January 2004 Rules Committee meeting.

3.2 (Cont'd)

(2) Approve Council Committee Workplans

- (a) All Children Achieve. Attachment: Memorandum from Mayor Gonzales and Chair Ken Yeager recommending approval of the All Children Achieve Committee workplan.

The Committee recommended approval of the All Children Achieve Committee workplan for the period January through June 30, 2004 and setting its meeting schedule on the second Thursday of each month at 1:30 p.m. in Room 204.

- (b) Building Strong Neighborhoods. Attachment: Memorandum from Mayor Gonzales and Chair Cindy Chavez recommending approval of the Building Strong Neighborhoods Committee workplan.

The Committee recommended approval of the Building Strong Neighborhoods Committee workplan for the period January through June 30, 2004 and setting its meeting schedule on the third Monday of each month at 1:30 p.m. in Room 204.

- (c) Building Better Transportation. Attachment: Memorandum from Mayor Gonzales and Chair Dave Cortese, dated December 17, 2003, recommending approval of the Building Better Transportation Committee workplan.

The Committee recommended approval of the Building Better Transportation Committee workplan for the period January through June 30, 2004 and setting its meeting schedule on the first Monday of each month at 1:30 p.m. in Room 204.

- (d) Driving a Strong Economy. Attachment: Memorandum from Mayor Gonzales and Chair Forrest Williams, dated December 17, 2003, recommending approval of the Driving a Strong Economy Committee workplan.

The Committee recommended approval of the Driving a Strong Economy Committee workplan for the period January through June 30, 2004 and setting its meeting schedule on the fourth Monday of each month at 1:30 p.m. in Room 204 and other locations as noted.

- (e) Making Government Work Better. Attachment: Memorandum from Mayor Gonzales and Chair Nora Campos, recommending approval of the Making Government Work Better workplan.

The Committee recommended approval of the Making Government Work Better Committee workplan for the period January through June 30, 2004 and setting its meeting schedule on the second Wednesday of each month at 2:30 p.m. in Room 204.

3.2 (Cont'd.)

- (f) Rules. Attachment: Memorandum from Mayor Gonzales and Vice Mayor Dando, dated December 4, 2003 recommending approval of the Rules Committee workplan.

The Committee recommended approval of the Rules Committee workplan for the period January through June 30, 2004 and setting its meeting schedule each Wednesday of the month at 2:00 p.m. in Room 204.

- (h) Oral communications – None were presented.

- (i) Adjournment
The meeting adjourned at 2:40 p.m.

Discussion/Action: Upon motion by Vice Mayor Dando, seconded by Council Member Chavez, and unanimously carried, the Rules Committee report and actions of December 17, 2003, were approved. Vote: 11-0-0-0.

3.3 **Report of the Making Government Work Better Committee – December 10, 2003** Council Member Campos, Chair

Documents Filed: The Making Government Work Better Committee report of December 10, 2003.

- (a) External Quality Control Review including Activities and Accomplishment of the Office of the City Auditor, July 2001-June 2003. Attachment: Hardcopy Report of the Activities and Accomplishments of the Office of the City Auditor July 2001 through June 2003 from the Office of the City Auditor, dated November 2003.

The Committee recommended approval of the Staff report.

- (b) Results of the Contract Streamlining Ordinance 6-month Follow-up Report. Attachment: Memorandum from Deputy City Manager Kay Winer, dated December 3, 2003, transmitting the progress update on results of the contract streamlining ordinance.

The Committee recommended approval of the Staff report and requested that Staff return to the Committee in March with a follow-up report.

- (c) San José Fire Department Bureau of Fire Prevention Audit Report. Attachment: Hardcopy Report of An Audit of the San José Fire Departments Bureau of Fire Prevention from the Office of the City Auditor, dated November 2003.

The Committee recommended approval of the Staff report and requested that Staff return to the Committee in March with a follow-up report.

3.3 (Cont'd.)

(d) Oral petitions

Bill Garbett spoke on the Contract Streamlining Ordinance and on the Fire Prevention Audit (specifically on agricultural expenses and re-inspection fees.)

(e) Adjournment

The Committee was adjourned at 4:00 P.M.

Discussion/Action: Upon motion by Council Member Reed, seconded by Council Member Campos, and unanimously carried, the Making Government Work Better Committee report and actions of December 10, 2003, were approved. Vote: 11-0-0-0.

ECONOMIC & NEIGHBORHOOD DEVELOPMENT

4.1 Report of the Building Strong Neighborhoods Committee – December 15, 2003

Council Member Chavez, Chair

Documents Filed: The Building Strong Neighborhoods Committee report of December 15, 2003.

- (a) Review City's Neighborhood Recognition Efforts. Attachment: Memorandum from Director of Parks, Recreation & Neighborhood Services Sara Hensley, dated December 9, 2003, transmitting a presentation of the Review of Neighborhoods Recognition Strategies.

Councilmembers expressed their compliments for a great presentation.

- (b) Discussion and Strategies to Further Involve the Community in Policing Programs. Attachment: Memorandum from Acting Chief of Police Thomas R. Wheatley and Director of Parks, Recreation & Neighborhood Services Sara Hensley, dated December 3, 2003, transmitting an analysis of how to involve the community in policing programs.

The Committee accepted the Strategies to Further Involve the Community In Policing Program Report.

- (c) Review and Discuss Enforcement Strategies of Anti-Graffiti & Litter Programs. Attachment: Memorandum from Director of Parks, Recreation & Neighborhood Services Sara Hensley, dated December 9, 2003, providing an update of the Anti-Graffiti and Litter Program (AGLP) enforcement efforts and year to date results.

The Committee accepted the Enforcement Strategies of Anti-Graffiti and Litter Program report.

4.1 (Cont'd.)

- (d) SNI Business Plan Final Draft. Attachment: Memorandum from Director of Parks, Recreation & Neighborhood Services Sara Hensley, dated December 9, 2003, transmitting a presentation on the Strong Neighborhoods Initiative Business Plan.

The Committee accepted the SNI Business Plan Overview update with the general comments and direction to Staff to provide the framework of the draft SNI Plan for Councilmembers reference to use as a tool for the budget discussions in January.

- (e) Oral Petitions – None.

- (f) Adjournment

The meeting was adjourned at 3:20 P.M.

Discussion/Action: Upon motion by Council Member Chavez, seconded by Council Member Campos, and unanimously carried, the Building Strong Neighborhoods Committee report and actions of December 15, 2003, were approved. Vote: 11-0-0-0.

4.3 Acceptance of the 2003 Annual Report on the General Plan. CEQA: Not a Project. (Planning, Building and Code Enforcement)

Documents Filed: None.

Discussion/Action: This item was dropped.

4.4 Report on bids and award of contract for the construction of the 13th St. Tree Planting, Street Lighting, and Sidewalk Improvements to the low bidder, Golden Bay Construction Company, Inc., in the amount of \$675,562, and approval of a contingency in the amount of \$34,000. CEQA: Exempt, PP03-04-106. SNI: 13th Street. Council District 3. (Public Works)

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated December 10, 2003, recommending said report on bids and said award of contract.

Discussion/Action: Brian Chapman spoke on the issue. Upon motion by Council Member LeZotte, seconded by Council Member Reed, the report on bids and award of said contract to the low bidder, Golden Bay Construction Company, Inc. was approved with related contingency. Vote: 11-0-0-0.

RECREATION & CULTURAL SERVICES

- 5.2 (a) **Approval to reject all bids for the Noble Park Play Area Renovation Project.**
(b) **Adoption of a resolution authorizing the City Manager to award the Noble Park Play Area Renovation Rebid Project to the lowest responsive bidder, and approval of a ten percent contingency, all in an amount not to exceed the funds appropriated for the Project.**

CEQA: Exempt, PP03-09-284. Council District 4. (Public Works/Parks, Recreation and Neighborhood Services)

(Deferred from 11/25/03 – Item 2.11 et al., and 12/16/03 – Item 5.5)

Documents Filed: (1) Supplemental memorandum from Director of Public Works Katy Allen and Director of Parks, Recreation & Neighborhood Services Sara Hensley, dated January 7, 2004, providing additional information after bids were opened. (2) Supplemental memorandum from Director of Public Works Katy Allen and Director of Parks, Recreation & Neighborhood Services Sara Hensley, dated December 9, 2003, providing additional information after bids were opened. (3) Memorandum from Director of Public Works Katy Allen and Director of Parks, Recreation & Neighborhood Services Sara Hensley, dated October 29 2003, recommending report on bids and to take appropriate action based on the evaluation of bids for the Noble Park Play Area Renovation Project, and approval of a five-percent contingency. (4) Hardcopy report on the Proposed Disqualification of Star Construction, Inc., formerly AV&C Construction, Inc. as General Contractor on Various Contracts with City of San José.

Discussion/Action: Upon motion by Council Member Reed, seconded by Council Member Chavez, and unanimously carried, Resolution No. 71910, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Award a Construction Contract for the Noble Park Play Area Renovation Rebid Project to the Lowest Responsive Bidder, and Approval of a Ten Percent Contingency”, was adopted. Vote: 11-0-0-0.

- 5.3 (a) **Approval of the appointment to the San José Beautiful Steering Committee of Russ Louthian and Cindy Sanders for a two-year term effective January 2004.**
(b) **Acknowledge the volunteer services of outgoing member Virginia Snyder.**

CEQA: Not a Project. (Parks, Recreation and Neighborhood Services)

Documents Filed: Memorandum from Director of Parks, Recreation & Neighborhood Services Sara Hensley, dated December 10, 2003, recommending approval of said appointments to the San José Beautiful Steering Committee and said acknowledgement.

Discussion/Action: Upon motion by Council Member Chavez, seconded by Council Member Williams, and unanimously carried, the appointment of Russ Louthian and Cindy Sanders to the San José Beautiful Steering Committee for said term and said acknowledgement were approved. Vote: 11-0-0-0.

- 5.4 Adoption of a resolution authorizing the City Manager to submit an application for funding under the State of California Urban Park Act of 2001 grant program in the amount of \$3,000,000 for a proposed Burbank/Del Monte Community Center in Council District 6, and negotiate and execute all related documents necessary to receive the grant and, if awarded, accept the grant. CEQA: Exempt, File No. PP03-12-376. Council District 6. SNI: Burbank/Del Monte. (Parks, Recreation and Neighborhood Services)**

Documents Filed: Memorandum from Director of Parks, Recreation & Neighborhood Services Sara Hensley, dated December 16, 2003, recommending adoption of said resolution.

Discussion/Action: Upon motion by Council Member Yeager, seconded by Council Member Chavez, and unanimously carried, Resolution No. 71911, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Execute and Submit an Application to the California Department of Parks and Recreation for a Grant Under the State of California Urban Park Act of 2001 for the Proposed Burbank/Del Monte Community Center in an Amount Not to Exceed \$3,000,000, to Accept the Grant if Awarded, and to Execute All Related Documents", was adopted. Vote: 11-0-0-0.

TRANSPORTATION SERVICES

- 6.2 PUBLIC HEARING and adoption of a resolution vacating a portion of Old Bayshore Highway west of North 13th Street. CEQA: Exempt, PP03-02-043. Council District 4. (Public Works)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated December 10, 2003, recommending said public hearing and adoption of said resolution. (2) Proof of publication of title of Resolution No. 71847, executed on December 23 and 30, 2003, submitted by the City Clerk.

Discussion/Action: Upon motion by Council Member Reed, seconded by Council Member Chavez, and unanimously carried, the Public Hearing was held and Resolution No. 71912, entitled: "A Resolution of the Council of the City of San José Vacating a Portion of Old Bayshore Highway West of N. Thirteenth Street", was adopted. Vote: 11-0-0-0.

- 6.3 PUBLIC HEARING and adoption of a resolution vacating a portion of O'Nel Drive between Guadalupe Parkway and Karina Court and reserving a public service easement over the entire area and the sidewalk easement on both sides of O'Nel Drive. CEQA: Resolution to be adopted. Council District 4. (Public Works)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated December 10, 2003, recommending said public hearing and adoption of said resolution. (2) Proof of publication of title of Resolution No. 71882 executed on December 23 and 30, 2003, submitted by the City Clerk.

6.3 (Cont'd.)

Discussion/Action: Mayor Gonzales opened the Public Hearing. There were no speakers on the issue. Mayor Gonzales closed the Public Hearing. Upon motion by Council Member Reed, seconded by Council Member Chavez, and unanimously carried, Resolution No. 71913, entitled: "A Resolution of the Council of the City of San José Vacating a portion of O'Nel Drive and Sidewalk Easement, Between Guadalupe Parkway and Karina Court, and Reserving a Public Service Easement", was adopted. Vote: 11-0-0-0.

AVIATION SERVICES

- 8.1 (a) (1) **Report on bids and take appropriate action based on the evaluation of bids for the Norman Y. Mineta San José International Airport North Concourse Building - Communication Cables Relocation (Package 0C), and approval of a ten percent contingency.**
- (2) **Approval to designate the Norman Y. Mineta San José International Airport North Concourse Building - Communication Cables Relocation (Package 0C) as a project subject to the terms of the San José International Airport Master Plan Project Labor Agreement.**
- CEQA: Resolution Nos. 67380 and 71451, PP 03-10-313. (Public Works/Airport)**
- (b) (1) **Report on bids and take appropriate action based on the evaluation of bids for the Norman Y. Mineta San José International Airport North Concourse Building, Gate A1-C Relocation Project (Package 0B), and approval of 15 percent contingency.**
- (2) **Approval to designate the Norman Y. Mineta San José International Airport North Concourse Building, Gate A1-C (Package 0B) as a project subject to the terms of the San José International Airport Master Plan Project Labor Agreement.**
- CEQA: Resolutions No. 67380 and 71451, PP 03-10-348. (Public Works/Airport)**

Documents Filed: None.

Discussion/Action: This item was deferred to January 27, 2004.

- 8.2 **Adoption of a resolution authorizing the City Manager to negotiate and execute 180-day extensions to the Airport Taxicab Concession Agreements with Yellow Checker Cab Company, Inc. and United Taxicab Corporation from March 31, 2004 to September 27, 2004, on the same terms as the current concession agreements, to ensure uninterrupted taxicab service provision. CEQA: Resolutions No. 67380 and 71451, PP03-12-372. (Airport/Transportation)**

Documents Filed: None.

Discussion/Action: This item was deferred to January 20, 2004.

JOINT COUNCIL/REDEVELOPMENT AGENCY

The Redevelopment Agency Board convened to consider Item 10.1 in a Joint Session at 1:53 P.M.

10.1 Approval of the Redevelopment Agency and City Council Standing Committee and Board and Commission appointments. (Mayor) (Rules in Lieu Referral 1/7/04)

Documents Filed: Memorandum from Mayor Gonzales, dated January 12, 2004, recommending Council make no changes to the current appointments to the said standing committees or to boards and commissions.

Discussion/Action: Upon motion by Vice Mayor Dando, seconded by Council Member Chavez, and unanimously carried, no changes to the Redevelopment Agency, City Council Standing Committee and Board and Commissions appointments were approved. Vote: 11-0-0-0.

The Redevelopment Agency Board portion of the meeting adjourned at 1:55 P.M.

NOTICE OF CITY ENGINEER'S PENDING DECISION ON FINAL MAPS

In accordance with Sec. 19.16.140d of the San Jose Municipal Code, this is notice of the City Engineer's pending decision on the following Final Maps:
None.

In accordance with Sec. 19.16.140d of the San Jose Municipal Code, this is notice of the City Engineer's receipt of the following Final Maps for review:
None.

OPEN FORUM—

- (1) Ross Signorino spoke on City Hall issues.
- (2) Deborah K. Grant spoke on Homeland Security issues.

RECESS/RECONVENE

The City Council recessed at 1:58 p.m. and reconvened at 7.04 p.m. Council Chambers, City Hall.

Present: Council Members - Campos, Chavez, Chirco, Cortese, Gregory, LeZotte, Reed, Williams, Yeager; Gonzales.

Absent: Council Members - Dando (excused).

The City Clerk Deanna J. Santana, read the requests for continuances of applications and other actions as recommended. Upon motion by Council Member Chavez, seconded by Council Member Campos, and unanimously carried, the below noted continuances were granted. Vote: 10-0-1-0. Absent: Dando.

- 1.2 Presentation of plaques to Dawn Davis for 6 years 7 months service on the Advisory Commission on Rents; to Miriam Ayllon for 6 years service on the Housing Advisory Commission; to Lisa Gonzales for 2 years 1 month service on the Housing Advisory Commission; to Linda Starr for 2 years 6 months service on the Human Rights Commission; to Miguel Chacon for 3 years service on the Small Business Development Commission; and to Charles Jones, Jr. for 3 years service on the Small Business Development Commission. (Mayor)**

Documents Filed: None.

Discussion/Action: Mayor Gonzales presented plaques to Lisa Gonzales for her service of 2 years and 1 month on the Housing Advisory Commission and to Charles Jones, Jr. for his service of 3 years on the Small Business Development Commission. In their absence, he commended Dawn Davis for her service of 6 years and 7 months on the Advisory Commission on Rents, to Miriam Ayllon for her service of 6 years on the Housing Advisory Commission, to Linda Starr for her service of 2 years and 6 months on the Human Rights Commission, and to Miguel Chacon for his service of 3 years on the Small Business Development Commission.

- 11.4 PUBLIC HEARING ON CONFORMING REZONING of the property located at the north side of Story Road, approximately 290 feet southwesterly of Jackson Avenue (2195 Story Road), from CP Commercial Pedestrian Zoning District to CN Commercial Neighborhood Zoning District. (Story Road LLC, Joy Belli, Owner). CEQA: Resolution No. 65459. SNI: East Valley/680 Communities. Director of Planning, Building and Code Enforcement recommends approval. No Planning Commission action required.
C 03-085 - District 5**

Documents Filed: Department of Planning, Building, and Code Enforcement Staff Report on Project File Number C03-085, dated December 10, 2003, recommending approval of the subject conforming rezoning.

Discussion/Action: Upon motion by Council Member Campos, seconded by Williams, and unanimously carried, Ordinance No. 27054, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated at the Southwest Corner of McKee Road and Jose Figueras Avenue to CN Commercial Neighborhood Zoning District", was passed for publication. Vote: 10-0-1-0. Absent: Dando.

- 3.4 Interviews for Appeals Hearing Board to fill two three-year terms ending December 31, 2006. (City Clerk)**

Documents Filed: Memorandum from City Clerk Patricia L. O'Hearn, dated December 19, 2003, recommending the Council interviews four applicants and make appointments to fill two, three-year terms ending December 31, 2006 on the Appeals Hearing Board.

Discussion/Action: Council interviewed the applicants and on the first ballot, unanimously appointed Willie James Adams (incumbent) and Joseph Gadano (incumbent) to the Appeals Hearing Boards for three-year terms ending December 31, 2006.

PUBLIC HEARINGS

(Item 11.1 was heard with Item 11.2.)

- 11.1 PUBLIC HEARING on approval of an ordinance amending Chapter 20.70 of Title 20 of the San José Municipal Code by modifying the provisions of the Downtown Zoning Regulations. CEQA: Resolution No. 65459, PP03-05-169. (Planning, Building, and Code Enforcement)**

(Continued from 6/3/03 – Item 11.3 et al., and 12/2/03 – Item 11.1)

- 11.2 PUBLIC HEARING ON DIRECTOR-INITIATED CONVENTIONAL REZONING of the property located within the area generally bounded 4th Street, Interstate 280, State Route 87 (Guadalupe Parkway), and Bassett Street, from CG General Commercial, R-M Multiple Residence, R-2 Two-Family Residence, LI Light Industrial Districts to DC Downtown Commercial District and DC-NT 1 Downtown Commercial-Neighborhood Transition 1 Districts, to allow mixed use, commercial, and residential uses on approximately 389 gross acres. CEQA: Resolution No. 65459. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (5-0-2). (Planning, Building, and Code Enforcement)**

C 03-072 - District 3

(Continued from 10/21/03 – Item 11.9 et al., and 12/2/03 – Item 11.3)

Documents Filed: None.

Discussion/Action: Items 11.1 and 11.2 were continued to March 16, 2004.

- 11.3 PUBLIC HEARING ON APPEAL of the Planning Commission's decision to deny a Conditional Use Permit for an asphalt/concrete crushing and recycling facility in the HI Heavy Industrial Zoning District, located approximately 550 feet northerly of Commercial Street and 1000 feet westerly of Berryessa Road (11711 Berryessa Road) on a 1.7 gross acre site. (Graniterock Company, Owner/Developer). CEQA: Mitigated Negative Declaration. The Director of Planning recommends: (1) overturn the Planning Commission's decision to deny the Conditional Use Permit and (2) adopt a resolution to approve a Conditional Use Permit with the inclusion of an additional condition that would require the applicant to redesign the project to be housed in a permanently enclosed and covered structure.**

CP 00-009 - District 4

Documents Filed: (1) Memorandum from Mayor Gonzales and Council Member Reed, dated January 9, 2004, recommending approval of the Conditional Use Permit and the conditions as recommended by the Planning Director in the Staff Report to the Planning Commission, dated August 20, 2003 with the modifications and additional conditions contained therein that provide further limits on potential impacts to the neighbors. (2) Supplemental memorandum from Director of Planning, Building & Code Enforcement Stephen Haase, dated January 9, 2004, transmitting supplemental information regarding the appeal of the Planning Commission decision to deny a conditional use permit for an asphalt/concrete crushing and recycling facility. (3) Memorandum from Director of Planning, Building & Code Enforcement Stephen Haase, dated December 10, 2003,

11.3 (Cont'd.)

recommending Council (1) overturn the Planning Commission's decision to deny the Conditional Use Permit (File No. CP00-03-009) to approval a Conditional Use Permit as described above with conditions as previously recommended by Planning staff, with the inclusion of an additional condition that would require the applicant to redesign the project to be housed in a permanently enclosed and covered structure. (4) Department of Planning, Building, and Code Enforcement Staff Report on Project File Number CP00-03-009, dated August 20, 2003, recommending approval of the subject Conditional Use Permit. (5) Proofs of publication of Notice of Public Hearings, executed on December 30, 2003, submitted by the City Clerk. (6) Hardcopy signed petition and E-mail correspondence to uphold the unanimous decision of the City Planning Commissioner and deny the proposed Conditional Use Permit. (7) E-mail correspondence opposing the proposed Granite Rock project. (8) Hardcopy letter from the United States Department of Commerce National Oceanic and Atmospheric Administration, dated January 13, 2004, recommending the proposed project not be permitted for a location within the floodplain of Coyote Creek. (9) Hardcopy of Powerpoint presentation of the Graniterock Berryessa Recycling Project.

Discussion/Action: The applicant Ben Lacari delivered a presentation on the proposed Granite Rock Berryessa Recycling Project. Council Member Chavez asked the applicant if he had seen the letter submitted to Council from the United States Department of Commerce National Oceanic and Atmospheric Administration, dated January 13, 2004. Ben Lacari stated the agency was one of several to whom Granite Rock will be working closely with in the upcoming months. Council Member Chavez asked the applicant if they have been working with said agency, since they requested in their letter that Granite Rocks' permit require the complete removal of the stockpiled material during the winter and rainy seasons between October 15th to May 15th. Ben Lacari stated they were planning on working with the agency further and the initial documentation that was sent to them may not have included the winter configuration. He stated they would be meeting with the various environmental agencies and the core of engineers to work out the final details and resolve any issues they may have since their approval is a requirement for permits. Craig K. Breon, Henry Zheng, Eric Gold, Milton Barrocas, Magnolia Lee, Wilson Lee, George Netto, Neil Struthers, Dale Warner, Fannie Zhang, Vu Tran, Chau Tran, Ming Pun, Kansang Liao, Chris Bencher, and James A. Cannon spoke on the issue.

Council Member LeZotte expressed her concerns regarding the request from the U.S Department of Commerce National Oceanic and Atmospheric Administration to place restrictions upon Granite Rock and asked the applicant for reasoning behind why this agency would request such a thing. Ben Lacari stated the agency must offer a biological opinion to the core of engineers to which they must accept that opinion first to issue an at-fault permit to Granite Rock and that permit has yet to be issued, but stated they would be meeting with them the next day to discuss any of their concerns.

Council Member Reed moved approval of his and Mayor Gonzales' memorandum, dated January 8, 2004 with said conditions contained therein. Council Member Chavez seconded the motion. Council Member LeZotte asked staff what will they be looking at in terms of the compliance hearings. Director of Planning, Building & Code Enforcement Stephen

11.3 (Cont'd.)

Haase stated in looking at the conditions of the permit, Granite Rock will still need to do the required water quality monitoring based upon the final solution for runoff and also fulfill the Bay Area quality issues. Council Member Williams asked the applicant if the existing noise level measured within the City's acceptable level. The applicant Bart Heckman stated the noise levels met City standards without the consideration of the fact that the plan is legal and nonconforming, the plant is currently not legal and nonconforming in regards to noise, they are only legal, therefore the current noise level is within the City's requirements.

Council Member Yeager asked staff what were the requirements for persons buying a home within the area close to Granite Rock to be disclosed about the existing conditions of the surrounding areas. Director Haase stated the title of the house that is supplied to the buyer should include all, if any legal issues in relation to the house they are purchasing and he was not sure if there have been any legal issues with Granite Rock that would require it to be on the title of any nearby housing. Council Member Reed stated he has been working with the issues of Granite Rock for over three years and amongst those years, he has walked the land use areas in question to specify where the noises that spurred the complaints from the community were coming from. The area so happens to be amongst an Industrial area to which the companies who are there create much noise, so Granite Rock cannot be the only company that is at fault for all of the noise pollution and he asked his fellow Council members for their support. Mayor Gonzales asked Director Haase to clarify what the U.S Department of Commerce National Oceanic and Atmospheric Administration's standard method of operation was and why would they make observations stated in their memorandum so late in the process and for staff to clarify what is the true purpose of the said memorandum. On a call for the motion and unanimously carried, the memorandum from Mayor Gonzales and Council Member Reed, dated January 8, 2004, recommending approval of the Conditional Use Permit and the conditions as recommended by the Planning Director in the Staff Report to the Planning Commission, dated August 20, 2003, with the following modifications and additional conditions contained therein with the additional direction for staff to conduct a compliance hearing in one year to allow the Planning Commission and staff to assess compliance with all conditions contained in the recommendation and said Council memorandum. Vote: 10-0-1-0. Absent: Dando.

ADJOURNMENT

The Council of the City of San José was adjourned at 9:13 p.m. in memory of Mrs. Henrietta Del Buono, a talented musician, artist, and cook; and in memory of Mike Triplett, Laboratory Technician in Environmental Services Department.

RON GONZALES, MAYOR

ATTEST:

DEANNA J. SANTANA, ACTING CITY CLERK

EW/1-13-04